

Southwest/West Central Service Cooperative E-Rate Appeal

- SWWC conducted fair and open procurement processes. The contracts went to the best-value bidder.
 - The service provider, Trillion Partners, Inc. (“Trillion”) was successfully selected for three separate SWWC procurement contracts to provide WAN and Internet access – in 2006, 2008, and 2009.
 - Trillion’s records mistakenly associate some gifts and travel with SWWC. This appears to reflect bad record-keeping by Trillion.
 - SWWC did not speak at a “CEPTA conference.”
 - SWWC received no gift cards.
 - SWWC personnel accepted invitations to present at two Trillion educational technology conferences, in August 2007 and June 2008, but these did not influence any procurement process.
 - Only the second and third of SWWC’s three procurements were held after the Trillion conferences. Thus, the conferences could not have affected the FRNs for funding years prior to 2007 in any event.
 - Trillion was the lowest-price and best-value bidder in all three procurements.
 - First procurement (WAN): Three bidders; Trillion was the lowest-price bidder (by nearly 50%).
 - Second procurement (additional site): Trillion was the only bidder, but still lower than the per-site bid offered by the next-lowest bidder in the original procurement
 - Third procurement (additional bandwidth): Two qualified bidders; Trillion was the lowest-price bidder (by nearly 50%).
 - SWWC’s attendance at the Trillion conferences did not affect SWWC’s decisions.
 - The travel and meals simply allowed SWWC to serve as a speaker at the conferences. The accommodations and meals were not lavish.
- SWWC did not violate any then-existing rules. USAC inappropriately applied the *Sixth Report & Order*’s gifting rules to funding periods before the rules’ effective date.
 - The FCC did not have formal E-rate gift rules in effect until the *Sixth Report & Order*, which took effect on January 3, 2011.
 - All of the FRNs in this appeal are for funding periods between 2006 and 2010.
 - The FCC may not apply rules before their effective date (per the Administrative Procedure Act and the Regulatory Flexibility Act).
 - No FCC decisions prior to the *Sixth Report & Order* discuss gift-giving.
 - The FCC’s prior jurisprudence regarding fair and open competitive bidding focused on direct involvement of service providers in the competitive bidding process, such as use of a service provider employee as the Form 477 contact.
 - In any event, SWWC conducted a fair and open competitive bidding process (see above).
- Reclaiming support will cause a significant hardship to the rural Minnesota schools that are members of SWWC.
 - SWWC member schools are extremely rural with very limited or no other options for broadband services

- On average 9.28% of households in SWWC region are in poverty.
- WAN enables distance learning and other enrichment, providing learning opportunities these small districts would otherwise be unable to provide.
- If the funding denial is upheld, SWWC will be forced to cut other programs to cover discounted cost.
- USAC's letter denying SWWC's appeal was so vague it is difficult for SWWC to respond intelligently to the allegations.
 - USAC did not address SWWC's factual and legal arguments.